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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,718	03/23/2006	Hideo Anraku	Q92291	9862
23373 7590 02/17/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER WALKER, NED ANDREW	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 02/17/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/564,718

Applicant(s)

ANRAKU ET AL.

Examiner

NED A. WALKER

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Drawings

1. The drawings were received on December 8th, 2008. These drawings are acceptable.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being obvious over Iheme et al. (US Pub. No. 20010039058) in view of Matweb (*Deflection Temperature Testing of Plastics – Typical Deflection Temperatures and Melting Points of Polymers [Archived from the internet June 5, 2002]*).

6. Regarding claims 1, 2, and 19, Iheme et al. discloses a sealed container (FIG. 6), which comprises a container (50) with an end being closed and the other end being open, comprising a thermoplastic resin ([0070]), and a stopper (20C) being detachable and capable of sealing the open end of the container (FIG. 6), the stopper having a head portion (40A) capable of being grasped, a leg portion A (49) being extended downward from the head portion, being along an internal wall surface of the open end of the container, and being capable of exerting a fitting force to the internal wall surface (FIG. 6), and a leg portion B (41A) being extended downward from the head portion, being along an external wall surface of the open end of the container, and being capable of exerting a fitting force to the external wall surface (FIG. 6), and at least a portion of the leg portion B of the stopper, which contacts the container, has a higher deflection temperature, under a load of 0.45 MPa or 0.46 MPa, of 60°C or more ([0069]), when compared to at least a portion of the container, which contacts the leg portion A of the stopper, has a deflection temperature, under load of 0.45 MPa or 0.46 MPa, of 60°C or more ([0070]).

The *Typical Deflection Temperatures and Melting Points of Polymers* published June 5th, 2002 by MatWeb defines the typical deflection temperature of polycarbonate, which Iheme et al. discloses as a material the cap may be prepared from ([0069]), as 140°C at 0.46 MPa. Furthermore, Matweb defines the typical deflection temperature of polypropylene, which Iheme et al. discloses as the material of choice for the container ([0070]), as 100°C at 0.46 MPa. These materials demonstrate the properties as claimed, including the cap having a higher deflection temperature than the container.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the materials disclosed are capable of demonstrating the typical deflection temperature associated with that material as these properties are old and well known within the art.

7. Regarding claim 3, Iheme et al. in view of Matweb discloses wherein a distance of the leg portion B of the stopper contacting with the external wall surface of the container is shorter than a distance of the leg portion A of the stopper contacting with the internal wall surface of the container in the longitudinal direction of the container (FIG. 6).

8. Regarding claims 4 and 8, Iheme et al. in view of Matweb discloses wherein a position of the fitting force exerted between the leg portion A of the stopper and the internal wall surface of the container being greatest and a position of the fitting force exerted between the leg portion B of the stopper and the external wall surface of the container being greatest are located at different positions in the longitudinal direction of the container (FIG. 6).

9. Regarding claims 5, 9, and 10, Iheme et al. in view of Matweb discloses wherein the leg portion A of the stopper has a surface layer comprising a thermoplastic elastomer or a thermosetting elastomer at least at a portion contacting with the internal wall surface of the container ([0069], FIG. 6).
10. Regarding claims 6 and 11-13, Iheme et al. in view of Matweb discloses wherein the stopper has a needle pipe insertable portion (33) comprising a thermoplastic elastomer or a thermosetting elastomer ([0069], FIG. 6).
11. Regarding claims 7 and 14-18, Iheme et al. in view of Matweb discloses a vacuum specimen-sampling container ([0096]), which comprises a sealed container, the inside thereof being in a reduced atmospheric pressure state. *The American Heritage® Dictionary of the English Language: Fourth Edition* defines vacuum as “a space in which the pressure is significantly lower than atmospheric pressure”, therefore Iheme et al. discloses the inside thereof being in a reduced atmospheric pressure state.

Response to Arguments

12. Applicant's arguments, see amendment filed December 8th, 2008, with respect to the rejection of claims 1-18 under 35 USC §112 have been fully considered and are persuasive in view of the amendment. The original rejection under §112 has been withdrawn.
13. Applicant's arguments, see amendment filed December 3rd, 2008, with respect to the rejection of claims 1-18 under 35 USC §102(b)/§103(a) as being anticipated by / obvious over Anraku et al. have been fully considered and are persuasive in view of the amendment to the claims. Therefore, the rejection has been withdrawn; however, upon

further consideration, new grounds for rejection have been made under 35 U.S.C. §103(a) as being obvious over Itheme et al. in view of Matweb.

The new grounds for rejection have rendered the remainder of the applicant's arguments regarding the aforementioned §102(b)/§103(a) rejection moot.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-

3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/
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